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SUBJECT: BURMA -- TIP 2009 TIER 3 SHORT-TERM ACTION PLAN

REF: (A) STATE 60440

¶1. This is an action cable: please see paragraph 4.

¶2. The 2009 Trafficking in Persons (TIP) Report carries policy and programmatic implications for those countries listed on Tier 3 (i.e. those countries whose governments do not fully comply with the minimum standards for the elimination of trafficking and are not making significant efforts to do so). Under the Trafficking Victims Protection Act of 2000, as amended, (TVPA) certain sanctions, effective October 1, 2009, may be imposed on Tier 3 countries. Sanctions may be avoided if, prior to the Presidential determination on sanctions, a country makes "significant efforts" to comply with the minimum standards and the Secretary determines that the country should be reassessed off of Tier 3.

¶3. The following statement is for Post's information only. If the Government of Burma completes the steps described below within 60 days of the TIP Report's release (by August 15, 2009) and, assuming that other efforts continue apace and there are no significant negative events related to human trafficking, G/TIP and EAP will recommend to the Secretary that she make a determination that Burma has been found to meet the criteria for Tier 2 Watch List. If the Government of Burma were reassessed to Tier 2 Watch List, it would no longer be subject to sanctions. If the steps below are not completed, and Burma remains on Tier 3, the President has the option to waive sanctions, either in full or in part, if he determines that doing so would promote the purposes of the TVPA or is otherwise in the national interest of the United States. (Note: the term "sanctions" is used herein to describe sanctions defined in the TVPA, including provision for directed voting in international financial institutions (IFIs)).

¶4. Action Request: Burma is listed as a Tier 3 Country in the 2009 TIP Report. Post is requested to approach the government to urge that it implement the following steps within the next 60 days. Department encourages Post to remind the government that, while these steps are critical in the next 60 days, continued significant efforts throughout the year will be key to next year's ranking.

¶5. Begin demarche/action plan:

The Secretary of State has determined that Burma neither fully complies with the minimum standards for the elimination of trafficking in persons, as set forth in U.S. law (the Trafficking Victims Protection Act, as amended), nor is it making significant efforts to comply with those standards. This places Burma on Tier 3. Within 90 days of the release of the Trafficking in Persons Report, the President must transmit to Congress sanctions determinations for countries on Tier 3; sanctions could include certain restrictions on USG foreign assistance; and negative USG votes in international financial institutions (IFIs).

During the next several months, the USG will work with the Government of Burma and foreign country missions most

directly affected by trafficking to promote improvements in combating trafficking in persons. (At the same time, the Government of Burma should work with foreign diplomatic missions directly affected, including Laos, Thailand, China, Malaysia, and Bangladesh. Based on actions taken by Burma within 60 days of the Report's release, Burma could be determined to have made significant efforts to bring itself into compliance with the minimum standards if it undertakes significant actions against trafficking during this time frame.

Fulfillment of the following steps would constitute significant efforts:

1A. Criminally prosecute a significant number of military and civilian officials responsible for both forced labor and the conscription of child soldiers. (Note to Post: In the event that the government is unable to arrive at an appropriate benchmark, five or more prosecutions will be deemed significant.)

-- Persons convicted should receive adequate prison sentences. (NOTE: Per the Implementation Guidelines, imposed sentences should involve significant jail time, with a majority of cases resulting in sentences on the order of one year, imprisonment or more, but taking into account the severity of the individual's involvement in trafficking, imposed sentences for other grave crimes, and the judiciary's right to hand down punishments consistent with that country's laws. END NOTE.)

-- Punishments limited to administrative penalties such as bans on future hiring, fines, and payment of back-wages to victims are not considered sufficient.

1B. Work closely and transparently with the international community to adequately verify and document cases of forced labor. This involves providing international organizations and NGOs access to parts of the country where forced labor cases are identified, and providing these international organizations and NGOs with private access to victims of forced labor.

1C. Work closely and transparently with the international community to adequately verify and cases of the unlawful recruitment and use of child soldiers. Demonstrate significant concrete progress in demobilizing child soldiers from all ranks of the Burmese military, including by significantly increasing the number of child soldiers identified and returned to their families, and granting UNICEF and other NGOs full and unrestricted access to released child soldiers for follow-up and assistance.

1D. Significantly increase the number of criminal prosecutions of cases involving internal sex and labor trafficking. (Note to Post: In the event that the government is unable to arrive at an appropriate benchmark, G/TIP suggests that &significant8 means on the order of ten or more.)

1E. Share information on human trafficking cases prosecuted by the government with international organizations and NGOs, and increase collaboration with international NGOs and international organizations in a transparent and accountable manner.

1F. Develop and implement a formal procedure to identify both labor and sex trafficking victims among vulnerable groups, including undocumented ethnic groups, women arrested for prostitution, and refer them to available protective services. Such training should include information on the application and enforcement of laws used to prosecute human trafficking (both labor and sex trafficking), sensitization in basic human rights concepts, trafficking victim and offender identification methods, and specific victim care procedures. Such training should also include information specific to the identification of victims of internal trafficking. Such training programs should be &hands-on8

and provide ample opportunity for participants to practice and apply the concepts discussed and receive feedback on their performance. If trafficking in persons-related expertise is not locally available, consider requesting that an international consultant or organization, such as IOM, with a proven capacity in this area deliver such a training program.

-- A formal procedure would, at a minimum, articulate a policy promoting proactive screening for victims, and training personnel in victim identification methods or assigning already trained personnel to high-risk areas.

-- A minimum sufficient victim identification procedure would include the use of social workers and/or other professionals trained specifically in trafficking victim identification to interview those in vulnerable groups for evidence of trafficking. (NOTE: Per the Implementation Guidelines, victims should not be expected to self-identify due to possible feelings of shame or fear of retribution from their traffickers or punishment by the government, and should go beyond the mere checking of an individuals, papers. END NOTE.)

--Proactive measures for victim identification are particularly necessary among groups vulnerable to trafficking, such as foreigners being held for deportation and women arrested for prostitution, and it is most appropriate in areas where these potential victims may interface with the government, including detention centers, deportation centers, and police stations.

-- Ensure that identified victims of trafficking, including victims of labor trafficking and victims without legal status, are not prosecuted, detained, or otherwise penalized for acts committed as a direct result of being trafficked, such as violation of immigration provisions or prostitution.

-- Ensure that victims receive access to victim services.(NOTE: Per the Implementation Guidelines, a government should ensure that victims receive access to primary health care, counseling, and shelter that allows them to recount their trafficking experience to trained social counselors and law enforcement at a pace with minimal pressure. END NOTE.) Establishing a standard referral procedure to transfer identified victims to NGO victim services is recommended.

End demarche/action plan.

16. Post's continued assistance and efforts in the fight to eliminate trafficking in persons are greatly appreciated.  
CLINTON